

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

SHERRY PARRISH,
Plaintiff,

CV 08-969-HU

OPINION AND ORDER

v.

**MICHAEL J. ASTRUE, Commissioner
of Social Security,**
Defendant.

MOSMAN, J.,

On March 3, 2011, Magistrate Judge Hubel issued his Findings and Recommendation (“F&R”) (#36) in the above-captioned case recommending that Sherry Parrish’s Motion for Attorney Fees (#33) be granted, with the award reduced to zero. Ms. Parrish objected (#38). No response was filed. The issue is whether all EAJA fees from prior actions should be deducted from an award for attorney fees under 42 U.S.C. § 406(b)(1). *See also* Act of Aug. 5, 1985, Pub. L. No. 99-80 § 3, 99 Stat. 183 (1985) (reducing recovery of § 406(b) fees by the amount of EAJA fees earned for the “same work.”).

BACKGROUND

Ms. Parrish’s application was denied twice by the Commissioner and remanded twice by the district court. Ms. Parrish’s counsel was awarded EAJA fees both times the district court

remanded. The most recent remand was for the immediate determination of benefits. (Judgment (#28).) Ms. Parrish's counsel now asks for payment of a contingency fee from the retroactive benefits. The F&R recommends deducting both EAJA awards from this contingency fee.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Hubel's recommendation, and I ADOPT the F&R (#36) as my own opinion.

IT IS SO ORDERED.

DATED this 13th day of April, 2011.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court